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No. 162

In the Supreme Court of the United States

OCTOBER TERM, 1968

ROBERT N. GOLUBIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Having waived trial by jury in the United States District Court for New Mexico, petitioner was convicted of mail fraud in the sale of lots and was sentenced to imprisonment for three years. Descriptions of the scheme and of the evidence supporting the conviction are set forth in the opinion of the court of appeals (Pet. App. A, 16–21). In upholding the sufficiency of the evidence, the court of appeals said (Pet. App. A, 18): "The controlling facts are not seriously disputed. The question is intent and it may be inferred 'from the conduct of the defendants, and circumstantial evidence, upon which reasonable inferences may be based.'"

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Presumably on the basis of this language, petitioner asks this Court to decide whether, in a criminal prosecution, the circumstances proved must be such as to exclude every reasonable hypothesis except that of guilt. That question was settled in *Holland* v. *United States,* 348 U.S. 121, 139–140, a unanimous decision which petitioner now asks this Court to reconsider. There is no occasion here to re-examine *Holland,* however, because, as the court of appeals noted, the only real issue in the present case was the intent with which acts were done. Obviously, intent can rarely be proved either directly or conclusively, but must reasonably be inferred from the conduct of the defendant and the total circumstances of the case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1968.

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